

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14084 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

ASHOK KITIKARI SHAH

Versus

STATE OF GUJARAT & 1

Appearance:

MR A.D. SHAH, Advocate for Petitioner.
Miss Harsha Devani, A.G.P. for Respondent No. 1.
Mr. M.R. Gehani, Advocate, for Respondent no.2.

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 11/03/96

ORAL JUDGEMENT

Rule. Miss Harsha Devani, learned A.G.P. waives service of notice of rule for respondent no.1. Mr. M.R. Gehani, learned Advocate, also waives service of notice for Respondent no.2.

2. The petitioner is facing trial for the offences u/s 5 of the Import & Export (Control) Act, 1947, Section 120-B read with Section 420 of the I.P.C. and Section

471 read with Section 467 of the I.P.C. in the Court Additional Chief Metropolitan Magistrate, Ahmedabad being Criminal Case No.144 of 1989. It is alleged that Ashok Kirtikant Shah, who was the Director/Managing Director of M/s. Universal Dyestuff Industries Ltd., Baroda. The said Company was granted licence for import of "Alkyl Benzene/Dodecyl Benzene" under Duty Exemption Entitlement Scheme as per para 9(1) and (2) of AM-83 policy. It is stated that during the investigation it is revealed that original Shipping Bills, Bank Certificate, Duty Exemption Entitlement Certificate Book and the Advance licence was found missing from the file of the office of Joint Chief Controller of Imports & Exports, Ahmedabad. it is also revealed that Shipping Bills bearing number given in para 5 and other shipping Bills were never filed on behalf of the accused Company showing the export of detergent washing powder during the relevant period of the f.o.b. value of Rs.1,90,27,524/-. It was also disclosed that under the aforesaid Shipping Bill Nos. live stock, such as buffaloes, goat and sheep were exported from Tuna Port. The Shipping Bills were filled in the month of August 1984, for the export of Live-stock. During pendency of the said criminal complaint in the Court of the Additional Chief Metropolitan Magistrate, Ahmedabad, the Dy. Collector of Customs issued a show cause notice u/s 124 of the Customs Act to M/s. Universal Dyestuff Industries Ltd and the petitioner had appeared before the Customs Collector and raised several questions and preliminary objections. The petitioner also prayed for stay of departmental proceedings till the conclusion of prosecution and the same was denied. The petitioner preferred Special Civil Application before this Court which was registered as 7873 of 1990. This Special Civil Application was rejected by the order dated 6-12-1990. This Court observed that the scope of adjudication proceedings are limited and it is not likely that identical evidence will have to be led in the adjudication proceedings and the criminal trial. It was further observed that even if there is anything overlapping the same is so little which does not call for interference by the Court in exercise of power under Article 226 of the Constitution of India. Against the said order the petitioner preferred Special Leave Petition before the Supreme Court which has been registered as Spl. Leave to Appeal(Civil) No.4230 of 1991. The Supreme Court by the order dated 25-3-1991 while issuing the notice staying further proceeding before the Customs Authorities.

3. In the present Special Civil Application the grievance of the petitioner is that similarly the Custom

Authorities, Special Director and Enforcement Directorate,, New Delhi has also issued Memorandum on 1-4-1987 for adjudication proceedings. The petitioner has submitted the reply to the show cause notice. It is also stated that Satish Babulal Shah against whom also the adjudication proceedings under FERA are initiated, is one of the prime witness for prosecution under Import and Export(Control). The further adjudication proceeding under FERA is definitely going to prejudice to the petitioner in criminal trial. It is submitted that the cross-examination of the petitioner by Satish B. Shah who is the main witness in criminal prosecution against the petitioner would necessarily create embarrassing position to stall the petition and likely to hamper the defence of the petitioner in criminal trial.

4. Mr. L.B. Clhaukekar, Chief Enforcement Officer, Enforcement Directorate, Ahmedabad has filed the affidavit stating that the show-cause notice has been issued for failure to fulfil the export obligation against the import i.e. the export of Rs.1,90,00,000/against the advance import of Rs.1,50,00,000/-. It is further stated that the question whether the export to the extent of Rs.1,90,00,000/- was carried out, can be determined from the record maintained by the Company. It is submitted that examination of Mr. Satish B. Shah will not prejudice to the defence of the accused.

5. Mr. Shah learned Counsel appearing for the petitioner has placed on record the order of the Supreme Court dated 7/12/1995 passed in Special Leave to Appeal No.4230 of 1995 wherein the Supreme Court has disposed of the said petition with the direction that further proceedings in the case before the Custom Authorities till the conclusion of the trial shall remain stayed.

6. Considering the facts that adjudication by the Custom Authorities on the same facts has been stayed by the Supreme Court, I consider appropriate that adjudication proceedings before Second Respondent be also stayed till conclusion of trial in the Court of the Additional Chief Metropolitan Magistrate, Ahmedabad. However, I direct that the said proceedings pending in the Court of the Additional Chief Metropolitan Magistrate, Ahmedabad shall be concluded within a period of three months from today. The Prosecutor,C.B.I., in the said case will cooperate and ensure that the trial is concluded within the time framed by this Court.

7. Rule is made absolute to the aforesaid extent,

with no order as to cost.

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